

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>Abby J. Loeffelholz dba Industrial Fabrication &amp; Machining, Inc.</b>  Black Hawk County, Iowa	ADMINISTRATIVE CONSENT ORDER  NO. 2014-AQ-03
---	---

TO: Abby J. Loeffelholz, President  
Industrial Fabrication & Machining, Inc.  
941 River Forest Road  
Evansdale, Iowa 50707

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Abby J. Loeffelholz dba Industrial Fabrication & Machining, Inc. (Industrial Fabrication) for the purpose of resolving the air quality violations which occurred when Industrial Fabrication failed to timely submit a Minor Source Emission Inventory (MSEI) for 2012. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Reid Bermel  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9535

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: INDUSTRIAL FABRICATION & MACHINING, INC.

Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. Industrial Fabrication is a steel fabricating company located at 520 W Parker Street in Waterloo, Iowa.
2. On January 15, 2013, DNR's Air Quality Bureau sent Industrial Fabrication a letter informing the facility that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the eastern third of the state of Iowa. The letter included instructions on how to complete and submit the 2012 MSEI for the facility. The letter also included information on additional assistance for completing the MSEI. The letter informed the facility the MSEI was due May 15, 2013 and stated a failure to meet the deadline could result in further enforcement.
3. On April 20, 2013, DNR sent a postcard to Industrial Fabrication stating that the facility had not yet submitted the MSEI. The postcard reminded the facility the MSEI was due May 15, 2013. The postcard also included information on assistance for completing the MSEI.
4. On May 15, 2013, the MSEI for facilities in the eastern third of the state were due. Industrial Fabrication failed to submit its MSEI by this date.
5. On June 3, 2013, DNR issued a noncompliance letter to Industrial Fabrication for failing to submit its MSEI by May 15, 2013. The letter stated the facility remained out of compliance until the MSEI was submitted and failure to submit the MSEI could result in further enforcement.
6. On July 31, 2013, DNR issued a Notice of Violation letter to Industrial Fabrication for failing to submit its MSEI by May 15, 2013. The letter stated the MSEI must be submitted by August 16, 2013 and failure to submit the MSEI would result in further enforcement. On January 2, 2014, Industrial Fabrication submitted the MSEI.
7. Industrial Fabrication has prior knowledge of the air quality regulations and its responsibility to abide by the regulations. In March 2005, Industrial Fabrication was issued a Notice of Violation letter for failing to timely submit the 2003 MSEI. In August 2007, Industrial Fabrication was issued a Notice of Violation letter for failing to timely submit the 2006 MSEI. In January 2009, Industrial Fabrication was issued another Notice of Violation letter for failing to timely submit the 2006 MSEI. In August 2010, Industrial Fabrication and the DNR entered into an administrative consent order for failing to timely submit the 2009 MSEI.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: INDUSTRIAL FABRICATION & MACHINING, INC.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 21.1(3) states that the person responsible for equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the Director upon the Director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEI for Industrial Fabrication was due May 15, 2013 and the facility was informed of this requirement on several occasions. The MSEI was not submitted until January 2, 2014. The above mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Industrial Fabrication agrees to do the following:

1. Industrial Fabrication shall pay an administrative penalty of \$1,450.00 within 30 days of the date the Director signs the administrative consent order.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,450.00. The administrative penalty is determined as follows.

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: INDUSTRIAL FABRICATION & MACHINING, INC.

enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Industrial Fabrication has been able to delay the costs associated with completing the MSEI for its facility. It is estimated that the economic benefit achieved by Industrial Fabrication is at least \$50.00 and \$50.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient method to resolve this matter. Industrial Fabrication's failure to timely submit the MSEI prevented the DNR and the public from being aware of the facility compliance status in regard to the rules and regulations. Failing to timely submit the MSEI prevents the DNR from accurately inventorying minor source air pollutants. This violation threatens the integrity of the regulatory program because compliance with the reporting requirements is required of all companies such as Industrial Fabrication. Additionally, the DNR has expended time in notifying the facility of the requirements. Therefore, \$500.00 is assessed for this factor.

Culpability – Industrial Fabrication has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The facility received at least three reminder letters regarding the submittal of the MSEI. The facility was also provided information as to where it could obtain assistance in completing the MSEI. Additionally, the facility has prior knowledge of the MSEI requirements from previous submittals. The facility received Notice of Violation letters for failing to timely submit the 2003 MSEI and the 2006 MSEI and an administrative consent order with penalty for failing to timely submit the 2009 MSEI. Based on the above considerations, \$900.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Industrial Fabrication. For that reason, Industrial Fabrication waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: INDUSTRIAL FABRICATION & MACHINING, INC.

  
\_\_\_\_\_  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 10<sup>th</sup> day of  
February, 2014.

  
\_\_\_\_\_  
Abby J. Loeffelholz dba Industrial Fabrication &  
Machining, Inc.

Dated this 31 day of  
JAN, 2014.

AQB #07-01-120; Kelli Book; Reid Bermel, DNR Field Office 1; VII.C.3